



12.

**Request for City Council Committee Action
From the Department of Public Works**

Date June 13, 2002
To Transportation and Public Works
Referral to Ways and Means/Budget

**Subject Lind-Bohanon Neighborhood Association Gateway Sign (49th Avenue
and Lyndale Ave N) Agreements**

Recommendation:

1. Authorize execution of Agreement with MnDOT (Minnesota Department of Transportation) regarding the landscaping for the area per the Community Roadside Landscaping Partnership Program.
2. Authorize execution of an agreement with the Lind-Bohanon Neighborhood Association regarding installation and maintenance of the sign and adjacent landscaped areas.
3. Amend the 2002 Capital Improvement appropriation resolution for the PW-Transportation Capital Agency in the Permanent Improvement Fund (4100-943-9440) by \$1,615 and increasing the revenue source 3215 (4100-943-9440) by \$1,615 to be reimbursed by MnDOT

Previous Directives:

- TPW 1/24/02 Directing staff to negotiate agreements with MnDOT and the neighborhood, and to return to TPW for agreement approvals.
- TPW 12/20/01 Authorizing Lind-Bohanon Neighborhood Association (LBNA) to submit application to MnDOT for gateway project located at 49th Avenue and Lyndale Avenue North, including a required Council resolution of support.

Prepared or submitted by Timothy Drew, Transportation Engineering Aide, 673-2152
Approved by David J. Sonnenberg, City Engineer, Director Public Works

by Greg Finstad

Presenters in Committee Timothy Drew, Transportation Engineer Aide

Financial Impact (Check those that apply)

☐ No financial impact - or - Action is within current department budget.
(If checked, go directly to Background/Supporting Information)

- ☒ Action requires an appropriation increase to the Capital Budget
☐ Action requires an appropriation increase to the Operating Budget
☒ Action provides increased revenue for appropriation increase
☐ Action requires use of contingency or reserves
☐ Other financial impact (Explain):

☐ Request provided to the Budget Office when provided to the Committee Coordinator

Background/Supporting Information Attached:

The LBNA desires to improve the northwest corner of 49th Avenue and Lyndale Avenue North intersection with a gateway element consisting of signage and landscaping designed by a landscape designer.

Funding sources for the project include NRP funds, the MCDA's Neighborhood Initiative Program, and MnDOT Community Roadside Landscaping Partnership Program.

MnDOT Responsibilities: This right of way is currently owned by MnDOT. MnDOT is agreeable to the sign on their property, but it is their standard practice that they are not willing to own or maintain the sign. MnDOT is also willing to fund up to \$1,615 for landscaping through their Community Roadside Landscaping Partnership Program.

Neighborhood Responsibilities: LBNA is prepared to fund, construct, install and maintain the signage area, and its adjacent landscaping. LBNA requested that the City consider ownership of the sign because of limits on neighborhood's liability insurance.

City Responsibilities:

- An application for installing a sign on trunk highway property has been submitted to MnDOT and approved.
- An agreement with MnDOT for the landscaping funds through the Community Roadside Landscaping Partnership Program is needed. (Attachment A)
- An agreement with the neighborhood regarding responsibilities for signage maintenance/repair, and landscaping has been developed. In the event that LBNA does not maintain the area, the City reserves the right to cancel the agreement with MnDOT and the neighborhood. (Attachment B)

Staff Recommendations:

1. Authorize execution of an agreement with MnDOT regarding the placement of a gateway sign on MnDOT property at the intersection of 49th and Lyndale Avenue North. The City Attorney's Office has reviewed and approved the Memorandum of Understanding.
2. Authorize execution of an agreement between the City Engineer and the Lind-Bohanon Neighborhood Association regarding maintenance of the sign and adjacent landscaped areas. The City Attorney's Office has reviewed and approved the agreement.
3. The PW Transportation Capital Appropriations in the Permanent Improvement Projects Fund (4100-943-9440) be increased by \$1,615 and the revenue for PW Transportation 3215 (4100-943-9440) by \$1,615 to be reimbursed by MnDOT

Attachment A – MnDOT Landscape Partnership Project #83264

Attachment B – Memorandum of Understanding with Lind Bohanan Neighborhood Association.

C: Council Member Johnson

OFFICE OF
ENVIRONMENTAL
SERVICES

STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION
LANDSCAPE PARTNERSHIP PROJECT

Mn/DOT
AGREEMENT NO.

83264

S.P. 2781-969e (T.H. 94=392)
State Funds

The State of Minnesota
Department of Transportation, and
The City of Minneapolis

ORIGINAL
AMOUNT ENCUMBERED

Re: State cost landscape materials
acquisition by the City for use
along T.H. 94

\$1,615.00

AMOUNT RECEIVABLE

(None)

THIS AGREEMENT is made and entered into by and between the State of Minnesota, Department of Transportation, hereinafter referred to as the "State", and the City of Minneapolis, Minnesota, acting by and through its City Council, hereinafter referred to as the "City".

WHEREAS the City is about to perform landscaping along Trunk Highway No. 94 in the northwest corner of 49th Avenue North and Lyndale Avenue North within the corporate City limits in accordance with City-prepared plans, specifications and special provisions designated as the "Lind-Bohanon Neighborhood Gateway Landscaping Plan", which project has been designated by the State as State Project No. 2781-969e (T.H. 94=392); and

WHEREAS the City has requested participation by the State in the costs of landscape materials acquisition in accordance with the terms of the State's "Community Roadside Landscaping Partnership Program"; and

WHEREAS the State is willing to participate in the costs of the landscape materials acquisition as hereinafter set forth; and

WHEREAS Minnesota Statute Section 161.20, subdivision 2 authorizes the Commissioner of Transportation to make arrangements with and cooperate with any governmental authority for the purposes of constructing, maintaining and improving the trunk highway system.

IT IS, THEREFORE, MUTUALLY AGREED AS FOLLOWS:

ARTICLE I - PROJECT ADMINISTRATION BY THE CITY

Section A. Landscape Materials Acquisition

The City shall acquire landscape materials in accordance with State-approved City plans, specifications and special provisions designated as the "Lind-Bohanon Neighborhood Gateway Landscaping Plan". Landscaping shall be performed by City forces in accordance with State-approved City plans, specifications and special provisions which are on file in the City's office and in the State's Office of Environmental Services in St. Paul, and are made a part hereof by reference with the same force and effect as though fully set forth herein.

Section B. Purchase Order to be Furnished to the State

The City shall, within 7 days after ordering the landscape materials, submit to the State's Landscape Partnership Program Coordinator in St. Paul a copy of the purchase order for the landscape materials.

Section C. Direction, Supervision and Inspection

Landscape materials acquisition performed in accordance with this Agreement shall be under the direction of the City; however, the State cost participation landscape materials to be acquired under this Agreement shall be open to inspection by the State's authorized representatives. The City shall give the State's Landscape Partnership Program Coordinator five days notice of its intention to receive delivery of the landscape materials.

Responsibility for the control of the State cost participation landscape materials acquisition covered under this Agreement shall be on the City and shall be carried out in accordance with State-approved City plans, specifications and special provisions designated as the "Lind-Bohanon Neighborhood Gateway Landscaping Plan".

The City must verify whether or not nursery vendors are under a Gypsy Moth Compliance Agreement between the Minnesota Department of Agriculture, hereinafter referred to as the "MDA", and the United States Department of Agriculture or under an MDA Japanese Beetle Quarantine. A current Certificate of Compliance must accompany all plant material shipped from nursery vendors subject to quarantines for Gypsy Moth and Japanese Beetle. To determine if vendors are subject to quarantines, call the MDA Supervisor of Plant Regulatory Services at (651) 296-8388.

Section D. Completion of Materials Acquisition and Installation

The City shall cause the acquisition and installation of landscape materials to be started and completed in accordance with the time schedule in the Community Roadside Landscaping Partnership Program

Project Application, which is on file in the State's Office of Environmental Services and is made a part hereof by reference with the same force and effect as though fully set forth herein. An exchange of letters between the appropriate City official and the State's Landscape Partnership Program Coordinator, for unavoidable delays encountered in the performance thereof, may extend the completion date for the landscape materials acquisition and installation.

Section E. Compliance with Laws, Ordinances and Regulations

The City shall, in connection with the acquisition of the landscape materials, comply with all Federal, State and Local laws, and all applicable ordinances and regulations.

Section F. Right-of-Way, Easements and Permits

The City is hereby authorized to work on State right-of-way for the purposes of installing and maintaining the landscape materials, including any necessary replacement of landscape materials that fail to survive.

The City shall, without cost or expense to the State, obtain all rights-of-way, easements, construction permits and any other permits and sanctions that may be required in connection with the installation of landscape materials. Prior to advance payment by the State, the City shall furnish the State with certified copies of the documents for those rights-of-way and easements, and certified copies of those construction permits and other permits and sanctions required for State landscaping.

ARTICLE II - STATE COST

Section A. Basis

The State's full and complete share of the costs of the landscaping to be performed along Trunk Highway No. 94 in the northwest corner of 49th Avenue North and Lyndale Avenue North within the corporate City

limits under State Project No. 2781-969e (T.H. 94-392) shall be equal to the delivered cost of the landscaping materials acquired in accordance with the "Lind-Bohanon Neighborhood Gateway Landscaping Plan."

Section B. Payment

It is estimated that the cost of the landscape materials acquisition is \$1,615.00. The maximum obligation of the State under this Agreement shall not exceed \$4,000.00, unless the maximum obligation is increased by execution of an amendment to this Agreement.

The State shall pay to the City an amount equal to the delivered cost of the landscape materials, not to exceed the maximum obligation, after the following conditions have been met:

1. Encumbrance by The State of the State's total cost share.
2. Execution and approval of this Agreement and the State's transmittal of it to the City.
3. Receipt by the State's Landscape Partnership Program Coordinator, from the City, of the following:
 - a. Copies of the purchase orders for the landscape materials, as provided for in Article I, Section B. of this Agreement.
 - b. Certified copies of the documents, as provided for in the second paragraph of Article I, Section F. of this Agreement.
 - c. Written request for payment, accompanied by copies of supplier invoices for the landscape materials acquisition and delivery.

ARTICLE III - GENERAL PROVISIONS**Section A. Installation and Maintenance by the City**

After acquisition of the landscape materials, the City shall install the landscape materials along Trunk Highway No. 94 and provide for the proper maintenance thereof, without cost or expense to the State. Maintenance shall include, but not be limited to, removal and replacement of all materials that fail to survive. Criteria for maintenance and replacement are shown and described in EXHIBIT "A", Maintenance Responsibilities Plan and Schedule, which is attached hereto and made a part hereof by reference.

Section B. Responsibilities of the City

The City shall, in connection with the landscape materials acquisition, installation and maintenance, comply with the following conditions:

1. Use of State right-of-way shall in no way impair or interfere with the safety or convenience of the traveling public in its use of the highway.
2. Preserve and protect all utilities located on lands covered by this Agreement, without cost or expense to the State.
3. As required by Minnesota Statute 216D, notify Gopher State One Call System (1-800-252-1166) at least 48 hours before any excavation is done on this project.
4. No advertising signs or devices of any form or size shall be constructed or shall be permitted to be constructed or placed upon State right-of-way covered by this Agreement.
5. Upon completion of the installation of landscape materials and during performance of maintenance operations, restore all

disturbed areas of State right-of-way so as to perpetuate satisfactory drainage, erosion control and aesthetics.

Any use of State right-of-way permitted by this Agreement shall remain subordinate to the right of the State to use the property for highway and transportation purposes. This Agreement does not grant any interest whatsoever in land, nor does it establish a permanent park, recreation area or wildlife or waterfowl refuge facility that would become subject to Section 4(f) of the Federal-Aid Highway Act of 1968.

Section C. Examination of Books, Records, Etc.

As provided by Minnesota Statute Section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices of each party relevant to this Agreement are subject to examination by each party, and either the legislative auditor or the state auditor as appropriate, for a minimum of six years from final payment.

Section D. Cancellation of Agreement

The State may cancel and terminate this Agreement for any cause or reason, including the State's desire to use any portion of State right-of-way subject to this Agreement for transportation purposes, by giving the City written notice at least 90 days prior to the date that such termination shall become effective. Upon cancellation of this Agreement, the City will be required to restore and return the area to a condition satisfactory to the State's Metropolitan Division Engineer at Roseville.

Section E. Claims

Each party is responsible for its own employees for any claims arising under the Workers Compensation Act. Each party is responsible for its own acts, omissions and the results thereof to the extent authorized by law and will not be responsible for the acts and omissions of others and the results thereof. Minnesota Statutes

Section 3.736 and other applicable law govern liability of the State. Minnesota Statutes Chapter 466 and other applicable law govern liability of the City.

Section F. Nondiscrimination

The provisions of Minnesota Statute Section 181.59 and of any applicable law relating to civil rights and discrimination shall be considered part of this Agreement as if fully set forth herein.

Section G. Agreement Approval

Before this Agreement shall become binding and effective, it shall be approved by a City Council resolution and receive approval of State and City officers as the law may provide in addition to the Commissioner of Transportation or his authorized representative.

ARTICLE IV - AUTHORIZED AGENTS

The State's Authorized Agent for the purpose of the administration of this Agreement is Todd Carroll, Landscape Partnership Program Coordinator, or his successor. His current address and telephone number are 395 John Ireland Boulevard, Mailstop 620, St. Paul, MN 55155, (651) 284-3760.

The City's Authorized Agent for the purpose of the administration of this Agreement is Tim Drew or his successor. His current address and telephone number are 350 South 5th Street, Room 233, Minneapolis, MN 55415-1390, (612) 673-1390.

IN TESTIMONY WHEREOF the parties have executed this Agreement by their authorized officers.

STATE ENCUMBRANCE VERIFICATION

Individual certifies that funds have been encumbered as required by Minn. Stat. §§ 16A.15 and 16C.05.

By _____

Date _____

MAPS Encumbrance No. _____

CITY OF MINNEAPOLIS

Approved as to form:

By _____
City Attorney

By _____
Mayor

Date _____

By _____

Title _____

Date _____

Countersigned:

By _____
City Finance Officer

DEPARTMENT OF TRANSPORTATION

Recommended for approval:

By _____
Landscape Partnership Program Coordinator

By _____
Division Engineer

Approved:

By _____
State Design Engineer

Date _____

COMMISSIONER OF ADMINISTRATION

As delegated to Materials Management Division

By _____

Date _____

OFFICE OF THE ATTORNEY GENERAL

Approved as to form and execution:

By _____

Date _____

~~~~~  
This Agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2002,

by \_\_\_\_\_ and \_\_\_\_\_,  
(Name) (Name)

the Mayor and \_\_\_\_\_ of the City of Minneapolis.  
(Title)

Notary Public \_\_\_\_\_

My Commission Expires \_\_\_\_\_

NOTARY  
STAMP

## **Memorandum of Understanding**

### **Lind-Bohanon Neighborhood Association and City of Minneapolis Signage and Landscaping Project on 49<sup>th</sup> and Lyndale Avenue North**

The purpose of this memorandum of Understanding is to identify the costs and responsibilities of the parties for the development, construction and maintenance of the signage and landscaping project on 49<sup>th</sup> and Lyndale Avenue North as directed by the Minneapolis City Council of February 2002.

Lind-Bohanon Neighborhood Association (LBNA) has received approval from the Minnesota Department of Transportation (MnDOT) to place the sign and landscaping on MnDOT right-of-way located on the northwest corner of 49<sup>th</sup> Avenue North and Lyndale Avenue North.

LBNA applied for a MnDOT Community of Minneapolis (city) Roadside Landscaping Partnership Program grant for landscaping/gateway project. The City approved a resolution in support (December 28, 2001). The total material cost was \$1,615. MnDOT requires a contract with the City (not LBNA) for this grant.

In February 2002 the Minneapolis City Council authorized Public Works staff to negotiate this agreement with LBNA regarding the neighborhood's responsibilities for maintenance of the sign and adjacent landscaped areas.

As a part of the February Council letter, LBNA request for the City to take on ownership of the sign and landscaping.

City will not be responsible for any costs related to future work performed by MnDOT, Hennepin County, others in the area that may affect the project.

LBNA agrees to install and maintain within a 30-foot diameter of the sign:

- Landscape: including but not limited to all prep work, mow/re-seed grass area as necessary, plantings, conduct weed control, snow removal (if necessary).
- Sign: Including but not limited to prep work, repair, repaint, replace, and removal of graffiti.

It is agreed that the City of Minneapolis will own the sign and landscaping.

The City's contribution to the project are limited to staffing management only.

If LBNA does not maintain according to MnDOT or City standards, the City reserves the right to remove the sign, restore or return the area to satisfactory condition, and charge LBNA the associated costs.

As witness thereof the Parties have caused their proper officers to sign this Memorandum of Understanding as follows:

LBNA

City of Minneapolis

By: \_\_\_\_\_

By: \_\_\_\_\_  
Mayor

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Countersigned: \_\_\_\_\_  
Finance Officer

Department Approved: \_\_\_\_\_  
Public Works

Approved as to Form:

\_\_\_\_\_  
Assistant City Attorney